IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 18943 of 2003(E)

PETITIONER:

N.RAFEEQUE, S/O.N.ABDUL RAHIMAN HAJI,
NOORANGAL HOUSE, P.O.MELMURI, MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAMDAS

RESPONDENTS:

THE MALAPPURAM MUNICIPALITY REPRESENTED
BY ITS SECRETARY, MALAPPURAM.

BY ADV. SRI.M.P.PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 18943/2003

ORDER ON CMP 5043/2003 IN O.P.No. 18943/2003

DISMISSED.

19/02/2007 SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT DATED 02/06/2003.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) NO. 18943 OF 2003 E

Dated, this the 19th day of February, 2007

J U D G M E N T

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent.

2. Prayer in the writ petition is for a direction to the respondent to make payment to the petitioner for the work completed by the petitioner, which is construction of a road for the benefit of the public. Petitioner's case is that work of that road could not be completed in full because public have not surrendered land. Learned counsel for the Municipality on the other hand contended that petitioner is ineligible for any payment for more than one reason. In the first place, petitioner has not produced any records to prove actual expenditure in terms of the contract. Secondly, the construction of the road was undertaken by the petitioner as Convenor of the Peoples Planning Programme and petitioner though a beneficiary of the road itself has not surrendered land owned by him, which is required for the construction of the road. I find force in the

contention of the Municipality, because the work done by the petitioner is not for profit as a contractor, but as Convenor of the Peoples Planning Programme, and therefore it was the duty of the petitioner to surrender land promised by him for completion of the road and to encourage others also for surrendering the land to complete the project. If the project is not completed, the public did not get the benefit and consequently Municipality will be justified in objecting claim for making payment to the petitioner, who did the work as representative of the Peoples Planning Programme. In the circumstances, it is for the petitioner first to surrender the land owned by him for the purpose of the road, and then complete the work after others surrender the land. Since the project is half way through, there will be direction to the Municipality to follow up the request for surrendering land by others and if anybody is resisting, to proceed for acquisition of such land, except petitioner's, which the petitioner is directed to surrender free as part of the original scheme. As and when petitioner completes the work, there will be direction to the Municipality to evaluate the work and make

payment. Payment should be made only when the project is fully completed and when petitioner produces Completion Certificate of the work evaluated by the concerned Engineer. If petitioner fails, work should be re-arranged.

This writ petition is disposed of as above.

(**C.N.RAMACHANDRAN NAIR, JUDGE.)**

jg